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April 6, 1983

Ms. Edna May Cate, Executive Secretary
Board of Barbering and Cosmetology
Hazen Drive
Concord, New Hampshire 03301

Dear Ms. Cate:

At its meeting on April 4, 1983, the Board requested an opinion from this office on the following question:

Does the board have the authority to establish a "cross-over" license which would allow either a licensed cosmetologist or a licensed barber to obtain a license in the other of the two professions by fulfilling requirements established by rule of the board that are less stringent or different from those currently in effect for both professions?

It is our opinion that the answer to your question is no. The board does not have the authority to alter the qualifications for a cosmetologist's or barber's license by establishing different or less restrictive qualifications for persons who are already licensed in one of the two professions.

The qualifications which any person must meet in order to obtain a barber's license are specified in RSA 313-A:9. These qualifications include the following:

"II. Have a total experience in barbering under a licensed barber, including any period of apprenticeship, of at least:



(a) One year and have satisfactorily completed a course of instruction of 1,000 hours, in not less than 6 months in a school of barbering;

(b) Six months and have satisfactorily completed a course of instruction of 1,500 hours, in not less than 9 months in a school of barbering; or

(c) Three thousand hours distributed over a period of at least 2 years under a licensed barber engaged in the practice of barbering within a state for at least 5 years;"

Similarly, the qualifications which a person must meet to obtain a cosmetologist's license are specified in RSA 313-A:10. These qualifications include the following:

"IV. Have training of:

(a) At least 1,500 hours extending over a period of at least one year in a school of cosmetology approved by the board; or

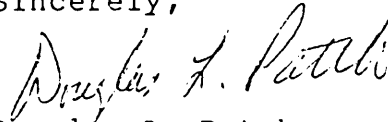
(b) At least 2 years in this state as an apprentice in a salon;"

The qualifications for both licenses, though somewhat similar in their basic outline, refer specifically to hours of training in schools of their respective professions. Since the definition of "barbering" under RSA 313-A:1, II differs substantially from that of "cosmetology" under RSA 313-A:1, VI, hours of education received in a school or apprenticeship for either profession would not satisfy the statutory requirement for the other profession.

The statutes cited above list very specifically the qualifications for both licenses. Although under RSA 313-A:7, II the board must adopt rules relative to "[t]he qualifications of applicants," the board may not under its rulemaking authority modify the qualifications specified in the statute. Kimball v. N.H. Board of Accountancy, 118 N.H. 567 (1978); Cooper, State Administrative Law, at 255 (1965). To adopt a rule that reduced qualifications specified in the statute for any person seeking to obtain either a barber's or a cosmetologist's license would unconstitutionally exceed the rulemaking authority granted to the board by the legislature, and would thus be invalid.

I trust this has been responsive to your question. Please let me know if you have any further questions.

Sincerely,



Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

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